

**REMARKS**

Upon entry of the present Amendment the Claims under consideration are 15, 17, 20, 22, 24, 28, and 29. Claim 15 has been amended hereby, and Claim 28 added, to further specifically claim the invention. Claim 29, drawn to a separately bonded containment flap analogous to Claim 19, has been added hereby. No new matter is added hereby. Support for the amendment may be found throughout the specification, including at least at page 3, lines 2-16; page 6, line 1; page 21, line 3; page 22, line 15 and page 23, line 15 of the specification. The language of withdrawn Claims 1-14 is listed herein according to the assumption that the amendments proposed for said Claims by Amendment A on 29 September 2003 were entered before withdrawal of said Claims by the Examiner. If said Claims should be listed as originally presented, it is respectfully requested that the Examiner notify Applicants to this effect. The Detailed Action of 07 June 2004 will now be addressed with reference to the headings and any paragraph numbers therein.

**Specification****Drawings**

Per paragraph 3 of the Detailed Action, Fig. 7 stands objected to. Applicants herewith submit proposed amendments to the drawing Fig. 7 (and incorporating the previously approved changes). Applicants request clarification of the objections with respect to element 36. Element 36, whose lead line is described by the Detailed Action as not dashed in Fig. 7, does not appear in the Figure. The lead line of reference number 22 on the left side of the drawing and previously undashed parts of accompanying elements 22 (left and right) are dashed to indicate underlying structure as requested by the Detailed Action. The lead lines of elements

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***In the Drawings:***

Please amend the drawing Fig. 7 per the appended Replacement Sheet having the amendments as shown in red on the Annotated Sheet Showing Changes which is also appended to detail said amendments.

44, 46 and 48 have been made dashed. Element 46 has further been dashed to indicate underlying structure.

### **Description**

Presuming the intent of the objection of paragraph 5 of the Detailed Action, Applicants have removed the “®” behind the capitalized word KRATON. Generic terminology has been used at the referenced page 16.

### **Claim Rejections -35 USC §102**

Per paragraph 8 of the Detailed Action, Claims 15, 17, and 19-20 stand as anticipated by Roe et al. (U.S. Patent 5,749,866, hereinafter Roe). It is the contention of the Detailed Action that because Roe is extensible in the transverse direction and includes longitudinal elastic members 54, it teaches each and every limitation of the present Claims. Applicants respectfully traverse the rejections.

Roe teaches integration of a “structural elastic-like film (SELF)” into various components of the disposable absorbent garment. The Detailed Action notes that: “the flap, i.e. panel 31 or 1831, is extensible in the transverse direction,...” (see Detailed Action at page 3, last line). However, Roe gives no teaching of a construction or arrangement of its materials sufficient to provide a containment flap having a free edge and an attached edge whereby an increase in dimension of the flap in the transverse direction is provided thereby preventing loss of vertical fit by maintaining the free edge of the flap against the body of the wearer by an increase in dimension in the transverse axis of the containment flap when the absorbent article is under load, as is presently claimed. It would appear to the person having ordinary skill in the art that, if Roe teaches a gasketing, Roe merely teaches an ordinary “constricting” type of gasketing whereby material is caused to constrict around the body of a wearer rather than having a gasketing material free end extend towards the

wearer when the worn article is under load, as taught and claimed in the present invention.

Further, Applicants again respectfully note that the present invention teaches and claims a containment flap which is not merely extensible in an inchoate sense, but which actually undergoes extension of its transverse dimension when tensioned by loading of the diaper (see e.g. page 3, line 8 of the specification). Applicants have amended the present claims to make clear that the normalized tensioning force produces an increase in transverse dimension of the flap, thus clearly defining over the teachings of Roe. Any teaching of the present invention by Roe could only be derived from having a knowledge of the present invention.

Each of Claims 17 and 19-20 are dependent from Claim 15 and incorporate all limitations with regard to containment flaps. Therefore, Roe cannot and does not anticipate the present Claims of the invention. It is therefore respectfully requested that the present rejection be withdrawn. If the Examiner feels that further language should be added to the claims to make clear this important distinction, the Examiner is again invited to call Applicants' undersigned attorney to suggest such clarifying language.

Per paragraph 9 of the Detailed Action, Claims 15, 17, 19-20 and 22 stand as anticipated by Serbiak et al. (U.S. Patent 5,846,232, hereinafter Serbiak). It is apparently the contention of the Detailed Action that because Serbiak teaches a necked liner and outer cover and includes elastic elements therebetween, and that because Serbiak has leg cuff areas with elastic elements 40, it teaches each and every limitation of the present Claims.

Applicants have amended Independent Claim 15, and added Claim 28, as per the above discussion to particularly point out that the claimed containment flap provides a containment flap having a free edge and an attached edge whereby an increase in dimension of the flap in the transverse direction is provided thereby preventing loss of vertical fit by maintaining the free edge of the flap against the body. Similarly, in added Claim 29, a containment flap separately bonded to the chassis for providing such functionality is claimed (without reference to the body of the wearer).

Serbiak is generally drawn to an extensible garment chassis with retraction properties. It is respectfully noted that the Serbiak leg cuff areas with elastic elements 40 are merely traditional leg cuff arrangements. Thus, it would appear to the person having ordinary skill in the art that Serbiak merely teaches an ordinary “constricting” type of gasketing at its leg cuff regions whereby material is caused to constrict around the body of a wearer rather than having a gasketing material free end extend towards the wearer when the worn article is under load, as taught and claimed in the present invention. The more typical arrangement of Serbiak is not taught as, and cannot be deemed to be, a teaching of the presently claimed containment flap elements without impermissible resort to the teachings of the present invention.

Particularly, with respect to Claim 19, reciting a separate bonding of the flap to the article chassis, Applicants respectfully note that Serbiak is unconcerned with and does not teach any containment flap elements separately bonded to the chassis. Serbiak is generally drawn to an extensible garment chassis with retraction properties. It is respectfully noted that the Serbiak leg cuff areas with elastic elements 40 are merely traditional leg cuff arrangements. This arrangement is not taught as,

and cannot be deemed to be, a teaching of the claimed separately bonded containment flaps without impermissible resort to the teachings of the present invention.

Further, each of Claims 17, 19-20, and 22 are dependent from Claim 15 and incorporate all limitations with regard to containment flaps. Therefore, Serbiak cannot and does not anticipate the present Claims of the invention. It is therefore respectfully requested that the present rejection be withdrawn.

### **Claim Rejections -35 USC §103**

Per paragraph 10 of the Detailed Action, Claim 24 stands as obvious over Serbiak in view of Morman *et al.* (U.S. Patent 6,472,045, hereinafter Morman).

It is the contention of the Detailed Action that Serbiak teaches all elements of the present Claims except that of bicomponent fiber usage and that Morman teaches the interchangeability of polyolefin and bicomponent fibers in a nonwoven web. Applicants hereby incorporate their above arguments with respect to the lack of teachings of Serbiak regarding the claimed containment flaps. Because neither reference teaches the specific arrangement and properties of the presently claimed containment flaps, their combination cannot be deemed to render the present invention obvious. Therefore, a *prima facie* case of obviousness has not been made by the Detailed Action and the present rejection must be withdrawn.

### **Double Patenting**

As the double patenting rejection is provisional at this point, it is premature for the Applicants to comment or act upon this rejection.

Conclusion

For all the foregoing reasons, the Claims as presently amended are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Request For Telephone Interview

Clearly, there are differences between the present invention and the cited references involving patentable subject matter. These differences are now believed by the Applicants to be further properly defined in the present Claims. The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. § 713) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance before issuing a final Office Action.

A check in the amount of \$430 is included herewith to cover the extension fee for a response within the second month past the shortened statutory period. No fees are believed to be owed for the addition of Claims 28 and 29 because the additional Claims do not exceed the highest number of claims previously paid for.

Favorable consideration is requested.

Respectfully submitted,



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ANNOTATED SHEET SHOWING  
CHANGES

